

Index No. 17-Civ.-9583 (LAK) (DCF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WANDA MUNOZ, individually and as next friend to
minor child C.B.,

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #:

DATE FILED: 11/15/21

Plaintiff,

-against-

THE CITY OF NEW YORK, P.O. KATHY HENRY,
P.O. RAINARD WROTEN, LT. RYAN PIERCE, P.O.
ROAN LEWIS, P.O. JAMES FICO, P.O. JONYA
MCDOWELL, P.O. ANTONIO LOMEDICO, P.O.
KENNETH WOISIN, EMERGENCY MEDICAL
TECHNICIAN ERNESTO MEJIA, UNIDENTIFIED
EMERGENCY MEDICAL TECHNICIAN JANE DOE
#1, JAMES P. O'NEILL, as Commissioner of the New
York City Police Department; DANIEL A. NIGRO, as
Commissioner of the New York City Fire Department;
sued herein in their official and individual capacities,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT'S MOTION FOR
RECONSIDERATION PURSUANT
TO LOCAL CIVIL RULE 6.3**

GEORGIA M. PESTANA

*Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Katherine J. Weall
Tel: (212) 356-5055
Matter No. 2017-071914*

MEMO ENDORSED

Memorandum Endorsement

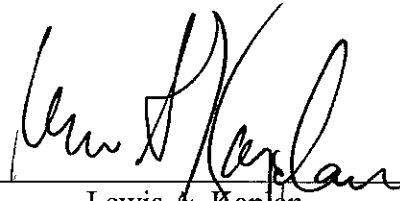
Munoz v City of New York, 17-cv-9583 (LAK)

Defendants' motion proceeds from the mistaken premise that the Court's ruling was based on a view that Ms. Munoz's subjective intent was relevant to the probable cause or arguable probable cause issue. Rather, it was based on the existence of "a conflict in the testimony of witnesses as to whether Munoz was trying to help C.B. enter the ambulance or trying to pull him out." The resolution of that conflict depends not upon Ms Munoz's subjective state of mind, but on the objective facts witnesses perceived. For example, was Ms Munoz exerting force on the body of C.B.? If so, was the force exerted such as would have assisted in propelling that 260 pound body up into the ambulance against the pull of gravity? Or was it exerted so as to pull C.B. down onto the street from the ambulance step consistent with the pull of gravity? The short answer, for present purposes, is simply that the relevant facts remain to be determined.

The motion for reconsideration is denied.

SO ORDERED.

Dated: November 15, 2021

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan
United States District Judge